

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JUAN RAMON TORRES and EUGENE	§	
ROBISON,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 4:09CV2056
	§	
SGE MANAGEMENT, LLC; STREAM GAS	§	
& ELECTRIC, LTD; STREAM SPE GP,	§	
LLC; STREAM SPE, LTD; IGNITE	§	
HOLDINGS, LTD. ; CHRIS DOMHOFF;	§	
ROB SNYDER; PIERRE KOSHAKJI;	§	
DOUGLAS WITT; STEVE FLORES;	§	
MICHAEL TACKER; DONNY	§	
ANDERSON; TREY DYER; STEVE	§	
FISHER; RANDY HEDGE; BRIAN	§	
LUCIA; LOGAN STOUT; AND PRESLEY	§	
SWAGERTY,	§	
	§	
Defendants.	§	

**DEFENDANTS' MOTION FOR LEAVE TO FILE MOTION FOR
SUMMARY JUDGMENT BRIEF IN EXCESS OF PAGE LIMIT**

Defendants file this Motion for Leave to File Motion for Summary Judgment Brief in Excess of Page Limit ("Motion for Leave") as follows below.

Pursuant to Local Rule 7.1 and section VII.A of this Court's Procedures, Defendants hereby request leave of Court to file a brief in support of their Motion for Summary Judgment in excess of the twenty-five page limit.

Rather than file several motions for summary judgment against two different plaintiffs whose claims are subject to different facts and defenses by fifty different Defendants comprising differently situated groups, Defendants hereby seek leave of Court to file a single joint Motion for

Summary Judgment that exceeds the page limits set forth by this Court. Defendants' brief is thirty-five pages in part because of the lengthy rendition of facts describing the different facts relating to each named Plaintiff, the structure and compensation system of Defendant Stream Gas & Electric, Ltd., and the various legal theories applicable to the two named Plaintiffs and various Defense groups.

Plaintiffs indirectly obtained substantially the same relief for their Motion for Partial Summary Judgment [Dkt. No. 122, Under Seal] without requesting leave of Court by simply incorporating by reference 50 pages of briefing in Plaintiff's Motion for Class Certification [Dkt. No. 121, Under Seal], effectively rendering Plaintiff's Motion for Partial Summary Judgment 75-pages long, not including lengthy arguments purportedly summarizing the evidence drafted by counsel and attached to Plaintiff's Motion for Class Certification. Defendants wish to simplify the briefing in this matter to the most efficient form possible, reducing the burdens on the Court and the parties, while maintaining parity with the page limit extension already provided to Plaintiffs. Defendants also believe it proper that a Motion for Summary Judgment be a self-contained document that does not require reference to other materials for factual or legal support of core issues raised in the motion.

Defendants also request that the Court shorten the time for hearing by submission on this Motion, pursuant to Rule 6(c)(1)(C) of the Federal Rules of Civil Procedure, Local Rule 7.8, and the Court's inherent authority to manage its docket, and set for hearing date for this Motion, by submission, for Tuesday, October 8, 2013. Finally, Defendants request that should the Court grant this Motion, Defendants' Motion for Summary Judgment and Brief in Support and the Appendix of Evidence attached thereto, filed contemporaneously to this Motion (filed under seal)

is deemed filed as of the date of filing this Motion for Leave for purposes of Plaintiffs' deadline to respond.

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING

Plaintiffs' lawsuit alleges at least one of the approximately fifty named Defendants is liable for alleged violations of the Federal Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968, which Defendants vehemently deny. Discovery has concluded, and Defendants' Response to Plaintiffs' Motion for Class Certification and Response to Plaintiffs' Motion for Partial Summary Judgment on Liability are due on October 4, 2013. The class certification hearing is set for November 5, 2013, and the Court has not yet determined a trial date should one be necessary.

STATEMENT OF THE ISSUES

This Motion requests the Court's determination of the following issues:

(A) Whether the Court should grant Defendants' request for leave to file a brief in support of its Motion for Summary Judgment in excess of the twenty-five page limit, but not to exceed thirty-five pages. Defendants request the Court to take into consideration Plaintiffs' Motion for Partial Summary Judgment [Dkt. No. 122], which incorporates by reference fifty pages of Plaintiff's Motion for Class Certification [Dkt. No. 121], thereby effectively filing a seventy-five page brief in support of summary judgment without seeking leave of Court, as well as Plaintiff's Motion for Leave to File Excess Pages [Dkt. No. 118]; and

(B) Whether the Court should grant Defendants' request to shorten the time for considering Defendants' Motion for Leave by making the hearing date, on submission only, next Tuesday, October 8, 2013.

SUMMARY OF THE ARGUMENT

In this lawsuit alleging civil RICO liability and operation of an illegal pyramid scheme by approximately fifty named Defendants, the parties produced more than seven hundred thousand pages of documents and took more than twenty depositions of witnesses. Defendants' Motion for Summary Judgment necessarily includes a significant and thorough examination of the facts and witness testimony provided to date to demonstrate Defendants' legal entitlement to summary judgment.

In light of Plaintiffs' refusal to agree to this Motion, Defendants also request the Court to hear and determine this Motion for Leave by submission on Tuesday October 8, 2013, pursuant to Rule 6(c) (1) (C) of the Federal Rules of Civil Procedure and Local Rule 7.8, and, if granted, deem Defendants' Motion for Summary Judgment filed as of the filing date for this Motion for Leave.

Finally, Defendants request that should the Court grant this Motion, Defendants' Motion for Summary Judgment and Brief in Support and the Appendix of Evidence attached thereto, attached to this Motion (filed under seal) is deemed filed as of the date of filing this Motion for Leave for purposes of Plaintiffs' deadline to respond.

Respectfully submitted,

**GRUBER HURST JOHANSEN HAIL SHANK
LLP**

By: /s/ John Franklin Guild

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF CONFERENCE

At noon on Wednesday, October 2, 2013, I called Scott Clearman at his office to discuss this Motion and ask if the Plaintiffs would agree to Defendants' Motion for Leave to file their Motion for Summary Judgment brief in excess of the twenty-five page limit. I left a message for Scott Clearman describing what I was calling about and asked him to return my call, and I also sent him an email about this Motion. Mr. Clearman did not return my call or respond to my email. I left a message for and sent an email to Brent Caldwell and Andy Kochanowski. On Thursday, October 3, 2013, Brent Caldwell sent me an email stating that he opposed this Motion.

/s/ Stefani S. Eisenstat
Stefani S. Eisenstat

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served upon all counsel via the Court's ECF and by email on this 4rd day of October, 2013.

/s/ John Franklin Guild
John Franklin Guild